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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ARTHUR LEE ALFRED, II et al.,

Plaintiffs,

v.

WALT DISNEY PICTURES,

Defendant,

Case No. 2:18-CV-08074-CBM-ASx

**STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF DEFENDANT WALT
DISNEY PICTURES' MOTION
FOR SUMMARY JUDGMENT**

*[Filed concurrently with Defendant's
Notice of Motion and Motion for
Summary Judgment; Declaration of
Robin S. Gray, Declaration of Rebecca
Cline; Declaration of Diego Parras;
Declaration of David Jessen, Notice of
Lodging; Proposed Order; Proposed
Judgment]*

Date: October 19, 2021

Time: 10:00 a.m.

Dept: Courtroom 8B

Judge: Hon. Consuelo Marshall

	Uncontroverted Fact	Supporting Evidence
Uncontroverted Facts Pertaining to Disney's Ride		
1.	Disneyland's Pirates of the Caribbean ride (the "Ride") opened in 1967.	<ul style="list-style-type: none"> • Cline Decl.¹ ¶ 6.
2.	Riders of Disneyland's Pirates of the Caribbean ride ("Riders") depart from Lafitte's Landing.	<ul style="list-style-type: none"> • Jessen Decl.² Ex. A [Disneyland 1968 Program] at 19:36.
3.	As Riders near a waterfall leading into a cave, a talking pirate's skull warns "there be plundering pirates lurking in every cove" and "Dead men tell no tales."	<ul style="list-style-type: none"> • Jessen Decl. Ex. A [Disneyland 1968 Program] at 20:03–20:50; Parras Decl.³ Ex. B [Ride footage] at 5:38–6:00.
4.	Riders then pass through treasure-filled caves where Riders see scenes of skeletons studying a map, drinking rum, clutching gold coins, and steering a ship.	<ul style="list-style-type: none"> • Jessen Decl. Ex. A [Disneyland 1968 Program] at 20:53–21:58. • Cline Decl. Ex. B [<i>E-Ticket Magazine</i>] at 26, 30 ("Heaps of jewels and gold spill from canvas bags, and the Pirate ride theme is heard, as if played on the cobweb covered harpsichord. A full-sized skull and crossbones adorns the jewel-encrusted headboard ... an ironic image, considering the status of the bed's occupant below. A navigator's sextant and a

¹ The "Cline Decl." refers to the concurrently filed Declaration of Rebecca Cline in Support of Defendant Walt Disney Pictures' Motion for Summary Judgment.

² The "Jessen Decl." refers to the concurrently filed Declaration of David Jessen in Support of Defendant Walt Disney Pictures' Motion for Summary Judgment. Timestamps to the video attached to the Jessen Declaration are given in the format [Minutes]:[Seconds].

³ The "Parras Decl." refers to the concurrently filed Declaration of Diego Parras in Support of Defendant Walt Disney Pictures' Motion for Summary Judgment. Timestamps to the video attached to the Parras Declaration are given in the format [Minutes]:[Seconds].

	Uncontroverted Fact	Supporting Evidence
		collection of nautical charts at the table attest that mere death and decomposition have not deterred this bold buccaneer from his quest for treasure and the call of the sea. Indeed, his naked skull sports a grin (grotesquely enlarged by the glass clutched in his spindly hand) as he studies a treasure map and plots the course of his next ocean voyage.”).
5.	As Riders pass through the caves, a voice repeats “dead men tell no tales.”	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 20:25–20:50.
6.	Before Riders exit the treasure-filled caves, a voice says there is an “evil curse” that lies upon the “bewitched treasure.”	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 21:05–21:15. Cline Decl. Ex. B [<i>E-Ticket Magazine</i>] at 30 (“<i>Perhaps ye knows too much ... Ye’ve seen the cursed treasure ... Ye know where it be hidden. These, and other threatening phrases of pirate verbiage ... reverberate along the narrow stone tunnel and hint of serious consequences to come.</i>”).
7.	Before Riders exit the treasure-filled cave, a voice says “No fear have ye of evil curses, says you?”	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 20:53–50:58.
8.	Riders then see a pirate ship attacking a port town in which cannons are firing, and a pirate captain aboard the ship shouts, “We’ll see you to Davey Jones!”	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 21:58–22:35.

	Uncontroverted Fact	Supporting Evidence
9.	Riders then see a port town being sacked.	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 22:37–26:42.
10.	Riders pass a “take a wench for a bride” auction, with more drunken pirates chanting “we wants the redhead.”	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 23:21–24:15. Cline Decl. Ex. B [<i>E-Ticket Magazine</i>] at 32–33 (discussing the scene).
11.	Riders pass pirates singing “Yo-Ho (A Pirate’s Life for Me).”	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 25:04–26:42.
12.	Riders pass a pirate balancing hats on his head, a pirate in the mud with pigs, and a pirate on a bridge missing a shoe.	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 25:10–26:42.
13.	Riders pass a scene of jailed prisoners attempting to use a bone to lure a dog with keys in its mouth over to their cell.	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 26:42–27:11.
14.	Riders pass pirates in a cave shooting pistols in a room full of barrels labeled “EXPLOSIVO,” where the pirates are again singing “Yo-Ho (A Pirate’s Life for Me).” The barrels explode.	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 27:11–28:18.
15.	Riders then go up the waterfall and emerge from the caves below.	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 28:14–28:55.
16.	Riders then pass through the port town again briefly before disembarking.	<ul style="list-style-type: none"> Jessen Decl. Ex. A [Disneyland 1968 Program] at 28:40–28:55.

	Uncontroverted Fact	Supporting Evidence
	Uncontroverted Facts Pertaining to Disney's <i>Pirates of the Caribbean: The Curse of the Black Pearl</i> (the "Motion Picture")	
17.	In the Motion Picture, Jack Sparrow and Will Turner team up to rescue Elizabeth Swann and retake the <i>Black Pearl</i> .	• Gray Decl. ⁴ Ex. A [Motion Picture] at 42:29–44:26.
18.	A curse has made Captain Hector Barbossa and his crew immortal skeletons, which is revealed when they are exposed to moonlight.	• Gray Decl. Ex. A [Motion Picture] at 55:55–57:42, 58:50–100:40.
19.	Barbossa and his crew sail the <i>Black Pearl</i> .	• Gray Decl. Ex. A [Motion Picture] at 38:08–38:20.
20.	Barbossa and his crew seek to reverse the curse.	• Gray Decl. Ex. A [Motion Picture] at 55:55–57:42, 58:50–100:40.
21.	The Motion Picture features the song "Yo-Ho (A Pirate's Life for Me)."	• Gray Decl. Ex. A [Motion Picture] at 00:40–00:56, 1:36:44–1:36:55, 2:12:44–2:13:03.
22.	The Motion Picture features an attack on Port Royal.	• Gray Decl. Ex. A [Motion Picture] at 29:40–37:40.
23.	The Motion Picture features skeleton pirates and cursed treasure.	• Gray Decl. Ex. A [Motion Picture] at 55:55–57:42, 58:50–100:40.
24.	The Motion Picture features a woman with red hair.	• Gray Decl. Ex. A [Motion Picture] at 51:06–51:19.
25.	The Motion Picture features a pirate sleeping with pigs.	• Gray Decl. Ex. A [Motion Picture] at 51:28–51:43.

⁴ The "Gray Decl." refers to the concurrently filed Declaration of Robin S. Gray in Support of Defendant Walt Disney Pictures' Motion for Summary Judgment. Timestamps to the Motion Picture attached as Exhibit A to the Gray Declaration are given in the format [Minutes]:[Seconds] or [Hours]:[Minutes]:[Seconds].

	Uncontroverted Fact	Supporting Evidence
26.	The Motion Picture features a dog in a prison with keys.	• Gray Decl. Ex. A [Motion Picture] at 27:19–27:33, 36:00–36:29.
27.	The Motion Picture features a watery cavern.	• Gray Decl. Ex. A [Motion Picture] at 109:00–1:16:00, 1:43:18–2:01:30.
28.	The Motion Picture features a prologue set in the Caribbean.	• Gray Decl. Ex. A [Motion Picture] at 0:23–4:52.
29.	The Motion Picture features a woman who is captured after being chased by pirates.	• Gray Decl. Ex. A [Motion Picture] at 34:22–34:50.
30.	The Motion Picture features a final battle in a cave.	• Gray Decl. Ex. A [Motion Picture] at 1:43:18–2:01:30.
31.	In the Motion Picture’s prologue, a ship leaves civilization.	• Gray Decl. Ex. A [Motion Picture] at 0:23–1:02.
32.	In the Motion Picture’s prologue, a young Elizabeth Swan finds a survivor of a shipwreck, a young Will Turner.	• Gray Decl. Ex. A [Motion Picture] at 2:22–4:05.
33.	In the Motion Picture’s prologue, Elizabeth steals Will’s medallion.	• Gray Decl. Ex. A [Motion Picture] at 4:08–4:18.
34.	In the Motion Picture’s prologue, Elizabeth spots a pirate ship fading into the fog.	• Gray Decl. Ex. A [Motion Picture] at 4:44–4:52.
35.	After the prologue, Elizabeth is now a young woman attending Captain James Norrington’s promotion to Commodore in the British Royal Navy.	• Gray Decl. Ex. A [Motion Picture] at 10:47–11:38.

	Uncontroverted Fact	Supporting Evidence
36.	Norrington asks Elizabeth to marry him.	• Gray Decl. Ex. A [Motion Picture] at 14:30–15:05.
37.	Elizabeth cannot breathe in her corset and faints, falling into the sea.	• Gray Decl. Ex. A [Motion Picture] at 15:00–15:07.
38.	As Elizabeth falls, it is revealed she is wearing the medallion she stole from Will.	• Gray Decl. Ex. A [Motion Picture] at 15:38–15:42.
39.	When the medallion hits the water, it emits a pulse.	• Gray Decl. Ex. A [Motion Picture] at 15:40–15:44.
40.	Jack Sparrow is in Port Royal to steal a ship.	• Gray Decl. Ex. A [Motion Picture] at 13:30–14:00.
41.	Sparrow sees Elizabeth fall and reluctantly jumps in to save her.	• Gray Decl. Ex. A [Motion Picture] at 15:24–15:37.
42.	Norrington recognizes Sparrow from a tattoo and attempts to arrest him.	• Gray Decl. Ex. A [Motion Picture] at 17:25–17:44.
43.	Sparrow flees into a workshop where he runs into Will.	• Gray Decl. Ex. A [Motion Picture] at 20:45–20:58.
44.	Will is an apprentice to a drunken blacksmith.	• Gray Decl. Ex. A [Motion Picture] at 7:06–7:56, 21:10–21:30, 22:10–22:19.
45.	Will despises pirates.	• Gray Decl. Ex. A [Motion Picture] at 22:38–22:50.
46.	Will engages Sparrow in a sword fight and captures him.	• Gray Decl. Ex. A [Motion Picture] at 22:54–27:00.

	Uncontroverted Fact	Supporting Evidence
47.	The <i>Black Pearl</i> lays siege to Port Royal.	• Gray Decl. Ex. A [Motion Picture] at 29:40–29:50.
48.	Two pirates capture Elizabeth.	• Gray Decl. Ex. A [Motion Picture] at 34:22–34:50.
49.	Elizabeth conceals her identity by saying her last name is Turner.	• Gray Decl. Ex. A [Motion Picture] at 39:37–39:48.
50.	Elizabeth demands to see their captain.	• Gray Decl. Ex. A [Motion Picture] at 34:22–34:45.
51.	Pirates visit Sparrow in his jail cell.	• Gray Decl. Ex. A [Motion Picture] at 36:38–37:25.
52.	As one pirate reaches through the bars of Sparrow’s cell, his arm is revealed as skeletal in the moonlight.	• Gray Decl. Ex. A [Motion Picture] at 37:05–37:20.
53.	Elizabeth meets Barbossa aboard the <i>Black Pearl</i> and urges him to leave the port.	• Gray Decl. Ex. A [Motion Picture] at 38:08–40:15.
54.	Barbossa agrees to leave the port and takes Elizabeth hostage.	• Gray Decl. Ex. A [Motion Picture] at 40:07–41:00.
55.	Will asks Sparrow for his help saving Elizabeth.	• Gray Decl. Ex. A [Motion Picture] at 42:29–44:26.
56.	Will and Sparrow set off for Tortuga to assemble a crew.	• Gray Decl. Ex. A [Motion Picture] at 48:26–50:29.
57.	Will learns Sparrow used to be the captain of the <i>Black Pearl</i> and that Barbossa mutinied and marooned Sparrow.	• Gray Decl. Ex. A [Motion Picture] at 105:40–107:42.

	Uncontroverted Fact	Supporting Evidence
58.	Elizabeth dines with Barbossa on the <i>Black Pearl</i> .	<ul style="list-style-type: none"> Gray Decl. Ex. A [Motion Picture] at 53:59–55:55.
59.	Barbossa explains that his men found the gold of Cortes, but realized too late that the treasure was cursed, turning Barbossa and his men into immortal skeletons, whose true skeleton nature is revealed by moonlight.	<ul style="list-style-type: none"> Gray Decl. Ex. A [Motion Picture] at 55:55–57:42, 58:50–100:40.
60.	The <i>Black Pearl</i> reaches Isla de la Muerta, where Cortes' gold is kept.	<ul style="list-style-type: none"> Gray Decl. Ex. A [Motion Picture] at 104:04–104:53, 108:00–108:14.
61.	Barbossa explains that to break the curse, they must return Cortes's gold medallions, as well as blood from every person who took them (or one of his or her descendants).	<ul style="list-style-type: none"> Gray Decl. Ex. A [Motion Picture] at 57:55–58:24.
62.	Barbossa is missing a medallion and blood from a single crewmember—Bill Turner, Will's father.	<ul style="list-style-type: none"> Gray Decl. Ex. A [Motion Picture] at 57:55–58:24.
63.	Believing Elizabeth to be Turner's child (because she had the medallion and claimed to be named Turner), Barbossa cuts her hand and drops the bloody medallion into the chest.	<ul style="list-style-type: none"> Gray Decl. Ex. A [Motion Picture] at 1:11:40–1:12:26.
64.	The curse is not broken by Elizabeth's blood.	<ul style="list-style-type: none"> Gray Decl. Ex. A [Motion Picture] at 1:12:26–1:13:12.
65.	Will knocks out Sparrow and saves Elizabeth.	<ul style="list-style-type: none"> Gray Decl. Ex. A [Motion Picture] at 1:11:52–1:12:00, 1:13:48–1:14:40.

	Uncontroverted Fact	Supporting Evidence
66.	Barbossa's men capture Sparrow and chase after Will.	• Gray Decl. Ex. A [Motion Picture] at 1:15:04–1:15:54, 1:16:36–1:17:27.
67.	When the <i>Black Pearl</i> reaches Will, battle ensues.	• Gray Decl. Ex. A [Motion Picture] at 1:23:03–1:30:48.
68.	Will threatens to render the curse unbreakable by taking his own life.	• Gray Decl. Ex. A [Motion Picture] at 1:31:30–1:32:06.
69.	Barbossa agrees to release Elizabeth and Sparrow, marooning them on the island where he previously marooned Sparrow.	• Gray Decl. Ex. A [Motion Picture] at 1:32:06–1:35:10.
70.	Barbossa keeps Will and Sparrow's crew captive and returns to Isla de la Muerta to break the curse.	• Gray Decl. Ex. A [Motion Picture] at 1:41:26–1:44:13.
71.	On the island, Sparrow and Elizabeth drink rum as Sparrow tells her the <i>Black Pearl</i> represents freedom.	• Gray Decl. Ex. A [Motion Picture] at 1:36:44–1:37:43.
72.	Sparrow collapses, drunk, and Elizabeth uses the rum to build a fire.	• Gray Decl. Ex. A [Motion Picture] at 1:38:29–1:39:30.
73.	The Navy sees the plumes and rescues Elizabeth and Sparrow.	• Gray Decl. Ex. A [Motion Picture] at 1:39:45–1:39:55.
74.	Once aboard Norrington's ship, Elizabeth pleads with Norrington to rescue Will.	• Gray Decl. Ex. A [Motion Picture] at 1:39:52–1:40:14.
75.	Elizabeth promises to marry Norrington, and asks him to save Will "as a wedding gift"; Norrington agrees.	• Gray Decl. Ex. A [Motion Picture] at 1:40:39–1:41:25.

	Uncontroverted Fact	Supporting Evidence
76.	On Isla de la Muerta, Barbossa again prepares to shed Will's blood and break the curse.	• Gray Decl. Ex. A [Motion Picture] at 1:44:00–1:44:36.
77.	Sparrow arrives at Isla de la Muerta and tells Barbossa the Navy is outside and suggests he wait to break the curse until after they have defeated the Navy.	• Gray Decl. Ex. A [Motion Picture] at 1:44:34–1:45:35.
78.	Sparrow proposes an alliance, under which he will captain the <i>Black Pearl</i> under Barbossa's colors; Barbossa agrees.	• Gray Decl. Ex. A [Motion Picture] at 1:46:10–1:47:45.
79.	Barbossa's crew ambushes Norrington's ship by walking under the water.	• Gray Decl. Ex. A [Motion Picture] at 1:48:11–1:48:56.
80.	Elizabeth boards the <i>Black Pearl</i> and frees Sparrow's crew.	• Gray Decl. Ex. A [Motion Picture] at 1:52:52–1:53:54, 1:57:42–1:57:50.
81.	Sparrow's crew promptly sails off and leaves Elizabeth to head to Isla de la Muerta.	• Gray Decl. Ex. A [Motion Picture] at 1:58:00–1:58:25.
82.	On Isla de la Muerta, Barbossa stabs Sparrow, but Sparrow survives—he has taken a piece of Cortes's treasure and is also cursed with immortality.	• Gray Decl. Ex. A [Motion Picture] at 1:55:18–1:55:50.
83.	Elizabeth saves Will and the two begin battling pirate guards.	• Gray Decl. Ex. A [Motion Picture] at 1:59:43–2:00:43.
84.	Sparrow and Will break the curse just as Sparrow shoots Barbossa in the heart.	• Gray Decl. Ex. A [Motion Picture] at 2:00:43–2:01:30.

	Uncontroverted Fact	Supporting Evidence
85.	Barbossa's crew is no longer immortal and surrenders.	• Gray Decl. Ex. A [Motion Picture] at 2:01:30–2:03:10.
86.	Later in Port Royal, the Navy prepares to hang Sparrow for piracy.	• Gray Decl. Ex. A [Motion Picture] at 2:04:29–2:06:27.
87.	Elizabeth declares her love for Will, and the two help Sparrow escape to the <i>Black Pearl</i> .	• Gray Decl. Ex. A [Motion Picture] at 2:07:55–2:08:51.
88.	The movie ends with Sparrow humming “Yo ho, a pirate’s life for me.”	• Gray Decl. Ex. A [Motion Picture] at 2:12:44–2:13:03.
Uncontroverted Facts Pertaining to Plaintiffs’ “Pirates of the Caribbean” Screenplay (the “Screenplay”)		
89.	Tova Laiter sent the Screenplay to Brigham Taylor at Disney Pictures with a cover letter (the “Cover Letter”).	• Dkt. 1-2. ⁵
90.	The Cover Letter states, “here is a brand new spec screenplay.”	• Dkt. 1-2.
91.	The Cover Letter describes the Screenplay as “a swashbuckling fun adventure, ‘Goonies’ meets ‘Pirates of the Caribbean.’”	• Dkt. 1-2.
92.	The Cover Letter describes the Screenplay as having “the image and expectations families associate with the Disney ride.”	• Dkt. 1-2.
93.	The Cover Letter states that the Screenplay “is also further along	• Dkt. 1-2.

⁵ The Cover Letter is also attached as an exhibit to the First Amended Complaint at Dkt. 112-2 at 2.

	Uncontroverted Fact	Supporting Evidence
	than your development project, so yours can be the sequel!"	
94.	The Cover Letter includes a postscript stating, "Please let me know as soon as possible as I have a draft that does not have the Disney song or the Ride references that I plan to take to other studios."	<ul style="list-style-type: none"> Dkt. 1-2.
95.	Plaintiffs pleaded that they "envision[ed] their screenplay incorporating the basic elements of the <i>Pirates of the Caribbean</i> ride."	<ul style="list-style-type: none"> Dkt. 1 [Complaint] ¶ 26.
96.	Plaintiffs entitled their Screenplay <i>Pirates of the Caribbean</i> .	<ul style="list-style-type: none"> Dkt. 1-1 [Screenplay] at 1, 6.⁶ Dkt. 1-2.
97.	The Screenplay was accompanied by concept art with the tagline "IT ISN'T JUST A RIDE ANY MORE" above an image of a skull and cross bones wearing a pirate cap.	<ul style="list-style-type: none"> Dkt. 1-1 at 3.
98.	Plaintiffs prepared a one-minute trailer for the Screenplay, which they called a "sizzle reel."	<ul style="list-style-type: none"> Dkt. 112 [FAC] ¶ 57. Dkt. 112-4.
99.	The "sizzle reel" uses content recorded from the Ride.	<ul style="list-style-type: none"> Compare, e.g., Dkt. 112-4 at 0:22–0:33 (sizzle reel's use of Ride's skeleton helmsman), 0:05–0:16, 0:26–0:43 (sizzle reel's use of Ride's "Yo Ho" song), 0:19–0:23 (sizzle reel's use of Ride's "Dead men tell no tales"), 0:49–0:55 (sizzle reel's use of warning from

⁶ References to page numbers of the Screenplay are to the ECF numbering at Dkt. 1-1. A black and white scan of the Screenplay (with differing ECF pagination) is also attached to Plaintiffs' First Amended Complaint as Dkt. 112-2.

	Uncontroverted Fact	Supporting Evidence
		Ride); with Jessen Decl. Ex. A at 21:45–21:50 (showing skeleton helmsman in the Ride), 25:05–26:43, 27:16–27:35 (showing “Yo Ho” song in Ride), 20:03–20:50 (showing “Dead men tell no tales” in Ride); Parras Decl. Ex. B at 5:38-6:00 (showing warning from Ride).
100.	The Screenplay includes six children, ranging in ages from seven to fifteen, known as “the Rascal Scoundrels.”	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 19–20.
101.	The Screenplay has a prologue.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 8–19.
102.	The Screenplay’s prologue includes an action sequence.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 8–19. • Dkt. 1-1 [Screenplay] at 9 (“Jack buries his fist into Davey’s gut who buckles in pain.”), 10 (“The first mate is blasted off the ship!”), 15 (“The crew closes in, swords thrusting forward.”)
103.	The Screenplay’s prologue includes an attack by a sea monster.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 16 (“For a quick second, we see a HUGE TENTACLE submerging back under the deck.”), 17 (Captain Jack: “That be no WHALE!” “The ship is under ferocious attack”).
104.	The Screenplay’s prologue also features a treasure map, a pirate named Davey Jones, his pirate love interest Jane, and his pirate adversary Jack Nefarious.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 8–19.

	Uncontroverted Fact	Supporting Evidence
105.	After the prologue, the Screenplay features an auction of wenches.	<ul style="list-style-type: none"> Dkt. 1-1 [Screenplay] at 19 (“A group of pirates surround a podium. A sign above reads: ‘TAKE A WENCH FER YER BRIDE.’”).
106.	The “WOMAN IN RED” is at the center of the auction.	<ul style="list-style-type: none"> Dkt. 1-1 [Screenplay] at 20–21 (“LINED UP ON A STAGE is a group of WENCHES, all of them large and porky, except for a WOMAN IN RED ravishing, sultry with long red hair, irresistible to any man”).
107.	During the auction of wenches, a “GROUP OF PIRATES” remarks “We wants the REDHEAD!”	<ul style="list-style-type: none"> Dkt. 1-1 [Screenplay] at 21.
108.	The Rascal Scoundrels steal pirates’ clothing and return to their ship.	<ul style="list-style-type: none"> Dkt. 1-1 [Screenplay] at 25–30 (“SIX DRUNK MIDGETS are stumbling out of a tavern ... the midgets are attacked and yanked back into the dark alley.... OUT WALK THE RASCAL SOUNDRELS in their new clothes.”).
109.	The Rascal Scoundrels call Davey Jones their “Captain.”	<ul style="list-style-type: none"> Dkt. 1-1 [Screenplay] at 30–31.
110.	The Screenplay states that Phantom Jack Nefarious’ pirate crew’s “faces are painted into TRIBAL SKULLS... INTIMIDATING.”	<ul style="list-style-type: none"> Dkt. 1-1 [Screenplay] at 53.
111.	The Screenplay includes a scene where Davey “swiftly kicks the skull-faced pirate dead in the balls.... As the skull-faced pirate	<ul style="list-style-type: none"> Dkt. 1-1 [Screenplay] at 57.

	Uncontroverted Fact	Supporting Evidence
	buckles in pain, he lets go of his sword”	
112.	At the end of the Screenplay, Davey Jones is “PRIVATEER CAPTAIN,” and he and Jane are joined by the Rascal Scoundrels in “[r]espectable” and “[c]lean BRITISH PRIVATEER clothes.”	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 109–111.
113.	At the end of the Screenplay, Davey Jones says, “I owe it all to them,” referring to the Rascal Scoundrels.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 110.
114.	The Rascal Scoundrel Clumsy overcomes his stutter.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 110 (“Clumsy didn’t stutter! Amazed, all heads turn toward him.”).
115.	Davey Jones and the Rascal Scoundrels defeat Captain Nefarious and find two halves of a map that lead them to a cave full of treasure.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 86–96.
116.	The Screenplay ends with the Rascal Scoundrels in naval uniforms and Davey saying “I owe it all to them.”	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 109–110.
117.	The Screenplay describes a scene as being set in a “cavern like the DISNEYLAND RIDE, ‘PIRATES OF THE CARIBBEAN,’” where the Rascal Scoundrels ride a boat down a waterfall.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 98.
118.	While in the cavern, the Rascal Scoundrels pass skeletons impaled by swords into the walls.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 98 (“Off to the side, SKELETONS OF PIRATES IMPALED BY

	Uncontroverted Fact	Supporting Evidence
		SWORDS, PINNED TO THE ROCKY WALLS.”).
119.	While in the cavern, “[a]n eerie voice echoes throughout the cavern” that says “No fear have ye of evil curses says you ... no fear of plunderin’ pirates lurking in every cove, says you.”	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 97–100.
120.	The Screenplay quotes the song “Yo-Ho (A Pirate’s Life for Me).”	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 39, 40, 52, 73, 109.
121.	The Screenplay includes the line “dead men tell no tales.”	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 10, 19, 105.
Uncontroverted Facts Pertaining to Similarities Between the Screenplay and the Ride		
122.	Plaintiffs “envision[ed] their screenplay incorporating the basic elements of the <i>Pirates of the Caribbean</i> ride.”	<ul style="list-style-type: none"> • Dkt. 1 [Complaint] ¶ 26.
123.	Plaintiffs in fact “incorporate[ed] the basic elements of the <i>Pirates of the Caribbean</i> ride” into their Screenplay.	<ul style="list-style-type: none"> • Dkt. 1 [Complaint] ¶ 26; Dkt 1-2 [Cover Letter].
124.	Plaintiffs titled their screenplay “Pirates of the Caribbean” after the Disney Ride.	<ul style="list-style-type: none"> • Dkt. 112 [FAC] ¶ 49.
125.	Plaintiffs’ Screenplay has “the image and expectations families associate with the Disney ride.”	<ul style="list-style-type: none"> • Dkt. 1-2 [Cover Letter].
126.	Plaintiffs’ Screenplay is set in the same place as the Ride (the Caribbean).	<ul style="list-style-type: none"> • Dkt. 112-6 [Román Report] at 19 (“The Screenplay’s setting is primarily located on the Caribbean

	Uncontroverted Fact	Supporting Evidence
		seas where much of the action unfolds.”).
127.	Plaintiffs’ Screenplay is set in the same pirate genre as the Ride.	<ul style="list-style-type: none"> • Dkt. 1-2 [Cover Letter].
128.	Plaintiffs incorporated various specific “Ride references” into their Screenplay.	<ul style="list-style-type: none"> • Dkt. 1-2 [Cover letter]
129.	Among these “Ride references,” Plaintiffs repeatedly incorporated the phrase “Pirates of the Caribbean” or “Pirate of the Caribbean” into the Screenplay.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 11, 29, 103.
130.	Plaintiffs used the Ride’s tagline (“Sail with the wildest crew that ever sacked the Spanish Main”) as the Screenplay’s tagline and incorporated it into Screenplay’s dialogue.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 1, 15. • Cline Decl. Ex. A [Poster with tagline].
131.	Plaintiffs took the Ride’s theme song (“Yo Ho (A Pirate’s Life for Me)”) and used it in the Screenplay.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 39, 40, 52, 73, 109.
132.	Plaintiffs’ named the orphans in the Screenplay “Rascal Scoundrels” which is part of a lyric in “Yo Ho”: “We’re <u>rascals, scoundrels</u> , and knaves.”	<ul style="list-style-type: none"> • Cline Decl. ¶ 5; Parras Decl. Ex. B [Ride footage] at 6:43–6:46.
133.	Plaintiffs named the “Rascal Scoundrels” after that lyric.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 74.

	Uncontroverted Fact	Supporting Evidence
134.	Plaintiffs took dialogue from the Ride and used it in the Screenplay, including the refrain “Dead men tell no tales.”	<ul style="list-style-type: none"> • E.g., Dkt. 1-1 [Screenplay] at 10, 19, 21, 82, 86, 100, 105, 109.
135.	Plaintiffs incorporated the Ride’s bride auction (including aspects of its staging, characters, such as “the redhead,” and dialogue, such as “We wants the redhead!”) into the Screenplay.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 19. • Jessen Decl. Ex. A [Disneyland 1968 Program] at 23:21–24:15.
136.	In Plaintiffs’ Screenplay, “the redhead” from the bride auction is the character Jane.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 19, 40, 42.
137.	Plaintiffs incorporated some of the Ride’s depictions of skeleton pirates into the Screenplay.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 37 (“STREAKS OF LIGHTNING SPLATTER THE SKY, FOLLOWED BY THUNDER! At that instant, A SKELETON WEARING RAGGED PIRATE’S CLOTHING is seen steering the ship!”). • Dkt. 1-1 [Screenplay] at 98 (“Off to the side, SKELETONS OF PIRATES IMPALED BY SWORDS, PINNED TO THE ROCKY WALLS...as if battle took place years ago...”). • Jessen Decl. Ex. A [Disneyland 1968 Program] at 20:40, 21:45.
138.	Plaintiffs incorporated a “cavern like the DISNYLAND RIDE,	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 98.

	Uncontroverted Fact	Supporting Evidence
	‘PIRATES of THE CARIBBEAN’” into the Screenplay.	
139.	Plaintiffs’ mockup poster for the Screenplay incorporates skeleton pirates photographed from the Ride.	<ul style="list-style-type: none"> • Dkt. 1-1 [Screenplay] at 5. • Jessen Decl. Ex. A [Disneyland 1968 Program] at 20:59, 21:53. • Cline Decl. Ex. B [<i>E-Ticket Magazine</i>] at 6.
Uncontroverted Facts Pertaining to Plaintiffs’ Expert, David Román		
140.	Plaintiffs’ expert David Román opines that “The Screenplay brings something entirely original to this traditional narrative by incorporating a humorous tone to the story.”	<ul style="list-style-type: none"> • Dkt. 112-6 [Román Report] at 5, 6. • Dkt. 139 [Román Rebuttal Report] at 4.
141.	Román opines that the presence of two sets of “male leads” is an “unusual similarity” between the Screenplay and the Motion Picture.	<ul style="list-style-type: none"> • Dkt. 112-6 [Román Report] at 8.
142.	Román opines that Screenplay “ingeniously blurs ... two stock characters,” the “archetypal swashbuckler” and the “pirate,” “to create a new type of protagonist with the qualities of both character types.”	<ul style="list-style-type: none"> • Dkt. 112-6 [Román Report] at 9.
143.	Plaintiffs’ original complaint pleaded that “[f]ilms have covered swashbuckling pirates,” then listed nine movies that predated Plaintiffs’ screenplay, “among many others.”	<ul style="list-style-type: none"> • Dkt. 1 [Complaint] ¶ 10.

	Uncontroverted Fact	Supporting Evidence
144.	Román opines that women and young girls “generally are not the [pirate] genre’s targeted audience.”	• Dkt. 112-6 [Román Report] at 11.
145.	Román opines that there is “no precedent in the genre of the pirate story to encourage such a prologue; in fact, it’s highly atypical”	• Dkt. 112-6 [Román Report] at 14.
146.	Román opines that the “element of romance” was one of the Screenplay’s “major innovations to the typical pirate story.”	• Dkt. 112-6 [Román Report] at 17. • Dkt. 139 [Román Rebuttal Report] at 4.
147.	Plaintiffs’ original complaint pleaded nine pirate movies by name, “among many others,” and stated that “the majority of these pirates [<i>sic</i>] films have a love story/triangle.”	• Dkt. 1 [Complaint] at ¶ 10.
148.	Román opines that James McDonald’s consideration of other works in the pirate genre was misguided because “other pirate movies are irrelevant to this case.”	• Dkt. 139 [Román Rebuttal Report] at 1.
149.	Plaintiffs’ original complaint pleaded nine other pirate movies by name “among many others.”	• Dkt. 1 [Complaint] at ¶ 10.
150.	Román opines that the 1827 James Fenimore Cooper novel <i>The Red Rover</i> is an “obscure work[]” that is “not widely known.”	• Dkt. 139 [Román Rebuttal Report] at 2.
151.	Plaintiffs’ original complaint included <i>The Red Rover</i> as one of eight pirate novels mentioned by name.	• Dkt. 1 [Complaint] at ¶ 8.

	Uncontroverted Fact	Supporting Evidence
152.	Román opines that he was informed that dissimilarities between the Screenplay and the Motion Picture “should not be given any consideration” in his analysis.	<ul style="list-style-type: none"> • Dkt. 139 [Román Rebuttal Report] at 11.
153.	Román opines that “[t]here was no ‘ghost ship’ anywhere in the Ride[.]”	<ul style="list-style-type: none"> • Dkt. 139 [Román Rebuttal Report] at 16.
154.	Román opines that “the Ride provides no backstory that discloses whether any pirates were cursed[.]”	<ul style="list-style-type: none"> • Dkt. 139 [Román Rebuttal Report] at 16.
155.	At his deposition, Román was asked, “Do you consider yourself as an expert in the Pirate genre?” Román testified, “No.”	<ul style="list-style-type: none"> • Gray Decl. Ex. B [Román Dep.] at 17:18–18:15. • Gray Decl. Ex. B [Román Dep.] at 94:9–11 (“I would say I wouldn’t name myself as having an expertise in pirate stories.”).
156.	Román testified that the question whether someone is an expert in the pirate genre is “tricky because it assumes that there is such a thing as a pirate genre I don’t know that I would necessarily identify the pirate stores having a genre of itself.”	<ul style="list-style-type: none"> • Gray Decl. Ex. B [Román Dep.] at 18:6–15. • Gray Decl. Ex. B [Román Dep.] at 107:1–3 (“I wouldn’t necessarily say that it is an established genre”).
157.	At his deposition, Román was asked, “do you consider yourself an expert in pirate literature?” Román testified, “I consider myself having familiarity with pirate literature.”	<ul style="list-style-type: none"> • Gray Decl. Ex. B [Román Dep.] at 18:16–20.
158.	At his deposition, Román was asked, “And did you receive any specific instructions about what standards you should apply in	<ul style="list-style-type: none"> • Gray Decl. Ex. B [Román Dep.] at 21:25–22:7.

	Uncontroverted Fact	Supporting Evidence
	comparing the works for similarities?” Román testified, “No. Not really. I mean, this is partly that I had my own set of criteria that I was using. Which I explained to the lawyers earlier on, that this is how I think, this is the kind of the work that I do, this is what a comparatist does.”	
159.	At his deposition, Román was asked, “Did you also feel that there were any significant differences between the works at that time?” Román testified, “Yeah, no, of course. There are obvious differences between the two works that—that are immediately apparent.”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 26:17–24.
160.	Román testified, “I will say this and again, this is with complete respect to all parties involved. I had no idea what they wanted me to do with this report, right?”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 38:12–14.
161.	Román testified, “I am just going to say what I said earlier. You know, I think that, from my understanding, my job was to read a screenplay and screen a film. And see what the overlap, if any, there was between them. So I kind of stayed clean to that mission, right? And that’s been my guiding principal throughout. What’s in the screenplay, what’s in in the film, what, if anything – what if any correspondence are there between them.... So I kept it pretty—I would use the word clean,	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 44:25–45:13.

	Uncontroverted Fact	Supporting Evidence
	kept it pretty clean. So I just thought I'm looking at the screenplay, I am screening the film. I was tasked to do a comparative analysis of the two."	
162.	At his deposition, Román was asked whether his counsel told him "anything ... about what standards governed the comparison of works for substantial similarity in copyright cases." Román testified, "There was just a couple of notes that, verbal, that I wasn't sure if I was supposed to write out all the things that I didn't find to be corresponding. So the dissimilarities. And I was informed that copyright laws aren't necessary interested in what doesn't correspond but what does correspond."	<ul style="list-style-type: none"> • Gray Decl. Ex. B [Román Dep.] at 47:19–48:14.
163.	At his deposition, Román was asked, "So other than being instructed to disregard dissimilarities between the two works, were you given any other information about the legal standards governing copyright cases?" Román testified, "No. I mean, I think that there was some kind of casual conversations about copyright infringement cases.... You know what it felt like? It felt like, you know, conversations in the hall But it didn't seem relevant to what I was tasked to do."	<ul style="list-style-type: none"> • Gray Decl. Ex. B [Román Dep.] at 48:10–49:11.

	Uncontroverted Fact	Supporting Evidence
164.	At his deposition, Román was asked, “And in connection with your assignment in this matter, were you specifically asked by counsel to apply any particular test for substantial similarity to your expert analysis?” Román testified, “I wasn’t guided specifically along those lines.”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 65:12–16.
165.	At his deposition, Román was asked, “Have you ever heard something called the extrinsic test for substantial similarity?” Román testified, “Not that I can recollect.”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 66:1–5.
166.	At his deposition, Román was asked, “In conducting your analysis of the two works at issue here, did you make any effort whatsoever to distinguish between protectable and unprotectable elements of the two works?” Román testified, “I wasn’t using the grid, the legal grid to write up my report, if that’s what you’re referring to.”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 68:9–24.
167.	In forming his original opinions, Román did not review other works in the pirate genre to determine whether individual elements in the screenplay and the Motion Picture were original to the Screenplay.	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 87:3–9 (“Q: But you didn’t go out and review pirate works to determine whether other pirate works incorporated a humorous tone into the story— A: No, no, and I wasn’t asked to do that. That wasn’t a task at hand.”); 146:23–147:12 (“Q: From the time you were retained to the time you generated your report, you didn’t review other pirates works to determine whether individual

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		<p>elements in the works you were comparing were original to the screenplay, right? A: Right. Because my task was very clear which is they wanted me to look at the screenplay and look at the film and base my analysis on that.”); 161:18–162:3 (“Q: And you weren’t personally familiar with all of the works in Mr. McDonald’s report, were you? A: No. No.... I did ask [Plaintiffs’ counsel] Aleks and Steven if it was important for me to review those materials. Like, do I need to read up on all of that? And their answer was absolutely not.”).</p>
168.	<p>At his deposition, Román was asked, “So I am asking you, is it your opinion as an expert on expressing an opinion about substantial similarities that all of the similarities you have described in your expert report relate to protectable elements of the work?” Román testified, “Let me answer it this way. You know, when I read the screenplay, I formed an opinion on the quality of the screenplay, its innovations, what I found interesting, what I found unusual, all of that, which I said several times already today. Then, when I screened the film and I saw some of those echoes, I thought, well, this is interesting. It does feel like copyright infringement. So, if what I identify as original and particular</p>	<ul style="list-style-type: none"> • Gray Decl. Ex. B [Román Dep.] at 74:2–24.

	Uncontroverted Fact	Supporting Evidence
	to the screenplay, I think should be protected by copyright law. But, again, I am not a lawyer and I am just saying that it does seem to me that the qualities in the screenplay that I have identified as original, even if they can be reduced to scènes à faire from an unimaginative limited perspective, I think that misses the importance of the contribution in the screenplay.”	
169.	Román testified that, other than <i>The Goonies</i> , which he watched “at the last minute” before submitting his expert report, he did not review any other works in the pirate genre before submitting his expert report.	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 100:18–101:1.
170.	At his deposition, Román was asked, “What was the last pirate novel you read?” Román testified, “ <i>Hamnet</i> .”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 117:7–11.
171.	At his deposition, Román was asked, “At the time you were preparing your original report, you understood that both works were inspired in part by the Pirates of the Caribbean them park ride, didn’t you?” Román testified, “I didn’t know that there was a theme park.”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 147:16–25.
172.	Román testified, “Do I think it is important to know the source material when comparing two works that share a same source material? ... I would say, yeah, it absolutely helps to know the source material.”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 151:16–23.

	Uncontroverted Fact	Supporting Evidence
173.	At his deposition, Román was asked, “Are you familiar with Long John Silver from <i>Treasure Island</i> ?” Román testified, “I wasn’t asked to screen that.”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 169:23–25.
174.	<i>Treasure Island</i> is one of the most famous works of pirate literature.	<ul style="list-style-type: none"> Dkt. 1 [Complaint] at ¶¶ 8, 10; Gray Decl. Ex. B [Román Dep.] at 107:18-25.
175.	At his deposition, Román was asked, “Are you saying that there is no precedence for the use of a prologue in general in pirate stories, or are you saying there is something specific about the prologue that lacks any precedence in pirate stories?” Román testified, “I would even just go that prologues are an incredibly unusual literary device at large. Like, there are not, like, a lot of literary texts that start off with a prologue.”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 199:3–14.
176.	At his deposition, Román was asked, “Did [counsel] give you anything in writing explaining your assignment or your conveying the legal standards?” Román testified, “No, no. I kind of – a part of me wished that they had, but no, that wasn’t the case.”	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 275:9–13.
177.	At his deposition, Román was asked, “So at the time you signed and submitted your initial expert report in this matter, you had never seen footage of the Walt Disney ride?” Román testified, “I can	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 323:16–20.

	Uncontroverted Fact	Supporting Evidence
	answer that confidently that I didn't see any footage of it."	
178.	At his deposition, Román was asked whether, at the time he signed and submitted his initial expert report in this matter, whether he had "[ever] ridden the Walt Disney ride?" Román testified, "No."	<ul style="list-style-type: none"> Gray Decl. Ex. B [Román Dep.] at 323:16–24.
Uncontroverted Facts Pertaining to Defendant's Expert, James McDonald		
179.	James McDonald's report includes a section titled "Assignment and Applicable Standards" in which he describes the "extrinsic test" for substantial similarity.	<ul style="list-style-type: none"> Dkt. 133-1 [McDonald Report] at 2–3.
180.	In forming his expert opinions, McDonald reviewed works in the pirate genre other than the Screenplay and the Motion Picture, including the "works cited in paragraph 8 of Plaintiffs' original Complaint: <i>A General History of the Pyrates, Robinson Crusoe, Treasure Island, Peter Pan, Captain Singleton, The Pirate, The Gold-Bug, The Coral Island, and The Red Rover</i> ,"; the "films cited in paragraph 10 of Plaintiffs' original complaint: <i>Treasure Island, Peter Pan, Savage Island, The Buccaneer, The Pirate, The Island, Captain Blood, Blackbeard the Pirate, and Yellowbeard</i> "; <i>The Goonies</i> ; and <i>Cutthroat Island</i> .	<ul style="list-style-type: none"> Dkt. 133-1 [McDonald Report] at 3–4.
181.	In forming his expert opinions, McDonald reviewed footage of the	<ul style="list-style-type: none"> Dkt. 133-1 [McDonald Report] at 3, 6, 8–10, 18, 21, 24, 27–29.

	Uncontroverted Fact	Supporting Evidence
	Disneyland theme park ride “Pirates of the Caribbean.”	
182.	McDonald assessed both works under the extrinsic test for substantial similarity and opines that they are “fundamentally dissimilar.”	<ul style="list-style-type: none"> • Dkt. 133-1 [McDonald Report] at 5–23.
183.	McDonald’s report includes a section titled “Novelty Analysis,” in which he analyzes whether the similarities identified in Román’s expert report are original to Plaintiffs’ Screenplay and/or whether they originated in the Ride.	<ul style="list-style-type: none"> • Dkt. 133-1 [McDonald Report] at 23–30.
184.	McDonald determined that many of the “similarities” identified by Plaintiffs were generic pirate genre tropes, stock elements, and <i>scenes a faire</i> .	<ul style="list-style-type: none"> • Dkt. 133-1 [McDonald Report] at 23–30.
185.	McDonald testified that, at the time he was engaged as an expert in 2017, he had “been looking at the pirate genre for some time,” including in connection with a previous engagement on another case involving <i>Pirates of the Caribbean</i> .	<ul style="list-style-type: none"> • Gray Decl. Ex. C [McDonald Dep.] at 59:21–61:04.

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